No. 87-1057

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1987

COOPER INDUSTRIES, INC.,

Petitioner,

vs.

JUNO LIGHTING, INC.,

Respondent.

PETITIONER'S REPLY MEMORANDUM

ROLF STADHEIM
HAIGHT & HOFELDT
224 S. Michigan Avenue
Suite 600
Chicago, Illinois 60604
(312) 939-7909

Counsel for Petitioner
COOPER INDUSTRIES, INC.

Of Counsel:
JOSEPH A. GREAR
DOUGLAS J. BORNEMANN
HAIGHT & HOFELDT
224 S. Michigan Avenue
Suite 600
Chicago, Illinois 60604
(312) 939-7909

ALAN THIELE
First City Tower
Suite 4000
Houston, Texas 77210

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In opposing certiorari, Respondent does not quarrel with the Questions Presented, nor does it seriously challenge the conflict between the circuits, the Seventh Amendment issue, or the need for this Court's guidance in resolving those questions. Instead, Respondent concentrates on the facts of this case and particularly the evidence that it submitted - - evidence that is contrary to the jury's verdict and was presumptively rejected by the jury.

Five reasons are advanced for denying the Petition. As will be seen, none is sound.

A. STANDARD OF REVIEW
(pp. 11-12)

Respondent contends that the court below applied the proper standard of review regarding the sufficiency of the

evidence. But, that standard, which is well settled, is not in issue. As emphasized in the Petition (p. 8): "Thus, the question is not, *how much evidence* constitutes sufficient evidence to support a verdict, but *which evidence* is considered in deciding whether there is sufficient evidence."

As to the question presented, the court below held that it should consider the whole of the evidence; announced that it was "Applying this standard;" and did just that (A26). While consistent with the 5th, 11th and D.C. Circuits, that standard, or approach, conflicts with this Court's *Wilkerson* decision, as well as the various holdings of the 1st, 2nd, 3rd, 4th, 8th and Federal Circuits.

B. THE CONFLICT
(pp. 12-14)

The conflict is conceded by Respondent's silence. The heading for the second reason for denying the Petition asserts that the "... Conflict Between The Circuits" is overstated, but the text never addresses that claim. Rather, Respondent tries to reconcile the cases in but one circuit, the Federal Circuit, and then simply concludes with the *non-sequitur* (p. 13): "More importantly, the purported conflict between the various Circuits is totally irrelevant to this case."

C. THE SEVENTH AMENDMENT VIOLATION
(pp. 14-15)

No attempt is made to respond to the reasoning, set out in the Petition, that a court, in relying on "all of the evidence" in granting a JNOV, of necessity, "reexamines" the facts in violation of the Seventh Amendment. Instead, Respondent again confuses the non-issue of the amount or sufficiency of the evidence with the issue of which evidence is to be considered. Thus, its *reductio ad absurdum* argument ("carried to its logical conclusion ... any pretense or scintilla of evidence by the non-movant would be sufficient ... " (p. 14)) is inapposite to the issue raised.

D. & E. THE COURT BELOW IGNORED THE SUPPORTING EVIDENCE (pp. 15-19)

Reiterated throughout the Opposition is the assertion that there was no evidence supporting the jury verdict; that the lower court did not ignore any evidence; and, indeed, that it (p. 8) "painstakingly" searched the record for supporting evidence, but found none.

The plain fact is the courts below, in focusing on the contrary evidence, did not even mention, much less rely on, the U.L. tests. Those tests alone established that Juno's fixture disconnected, as recited in patent Claim 9, " . . . in response to the temperature in an area surrounding the outside of said lighting fixture reaching a predetermined temperature."

> Underwriters Laboratories . . . conducts tests as follows: . . . The thermal device must disconnect the fixture when any point in contact with insulation [outside the fixture] reached 90 degrees C. [0918]

Respondent's only attempted answer (p. 7) is its charge that Petitioner "mischaracterized" the U.L. tests - - a charge based solely on its own interpretation of an advertising piece of Petitioner. Weighing and interpreting the evidence was a function of the jury and it found, in accordance with the plain meaning of the exhibits, that the U.L. tests required that the lamp disconnect when the temperature outside the fixture reached a predetermined temperature. Thus, had the court below focused solely on the supporting evidence, rather than on all of the evidence, the verdict could not have been overturned.

CONCLUSION

The conflict between the circuits on the fundamental guarantee of the right to a trial by jury should be resolved by this Court. The writ should issue.

Respectfully Submitted,

ROLF STADHEIM
HAIGHT & HOFELDT
224 S. Michigan Avenue
Suite 600
Chicago, Illinois 60604
(312) 939-7909

Counsel for Petitioner
COOPER INDUSTRIES, INC.